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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re D.P., a Person Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

N.O.,

Defendant and Appellant.

G043106

(Super. Ct. No. DP017137)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gary Bischoff, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Marsha F. Levine, under appointment by the Court of Appeal, for Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Aurelio Torre, Deputy County Counsel, for Plaintiff and Respondent.

* * *

N.O., mother of D.P., appeals from the termination of her parental rights. She contends the juvenile court erred in failing to find that the preservation of her relationship with D.P. would be more beneficial to the child than the stability and permanence of adoption. We affirm.

FACTS

D.P. was born in June 2008. Her parents surrendered her for adoption at birth but changed their minds a few days later. Because D.P. tested positive for illegal drugs, she was adjudicated a dependent of the juvenile court and placed in the custody of the Orange County Social Services Agency (SSA). The parents were offered reunification services but were unable to reunify. We affirmed the termination of reunification services in *N.O. v. Superior Court* (Dec. 15, 2009, G042316) [nonpub. opn.]. The facts from that opinion are incorporated here by reference; we summarize the subsequent events and testimony adduced at the permanent plan selection hearing.

SSA prepared a series of reports for the permanent plan selection hearing, originally set for November 2009. The child was assessed as adoptable; her caretakers, with whom she had been placed since July 2008, wanted to adopt her. The social worker reported the child had bonded with both prospective adoptive parents and their seven-year-old son.

The mother had been living with the father, a known drug user, at the time of the hearing at which reunification services were terminated. She moved out of the father's home shortly after that hearing, in August 2009. She completed her perinatal program in November 2009 and was attending individual counseling under a contract provided by SSA. By mid-December, however, the social worker was concerned that the mother had resumed contact with the father.

The mother visited with the child twice a week for four hours each time. The visits were monitored "because of the safety risk[s] to the baby that were being posed by the mother's insistence upon giving the baby new foods that were not advisable,

and the mother's resistance to professional advice concerning this issue. Also, the mother did not accept her own responsibility for the baby's injuries during the visits when she allowed the baby to run in the mall without restraint; and instead, the mother obliquely blamed the caregivers by claiming that the baby's shoes had tripped her and made her fall." But the visits were otherwise successful. The social worker reported that the mother and baby "interact quite well and they seem to have a lot of fun together." The mother "spends a lot of time during the visit in teaching the baby words and motor skills, and . . . she gives the baby a lot of smiles and eye contact."

On December 21, 2009, at the outset of the permanent plan selection hearing, the mother filed a petition under Welfare and Institutions Code section 388¹ to modify the previous order terminating reunification services and setting a permanent plan selection hearing. The mother sought an order either returning D.P. to her home with family maintenance services or providing her with additional reunification services. In her declaration filed in support of the petition, the mother stated she was living with her mother and stepfather, where there was room for the baby. The mother detailed the skills she had learned in the perinatal program regarding addiction, conflict resolution, parenting, and relapse prevention. She was attending Alcoholic Anonymous and Narcotics Anonymous meetings twice a week, a weekly group recovery meeting at Saddleback Church, and weekly individual therapy. The mother declared she and D.P. shared a "strong mother-daughter bond" and she "never stopped loving or wanting her."

The juvenile court denied the section 388 petition and began the permanent plan selection hearing. The social worker and the mother testified; their testimony was consistent with the reports and declarations received in evidence. The juvenile court found the child was adoptable. It found the mother ultimately began to "engage in her services" and "regularly maintain visitation and contact with the child," although at the

¹ All statutory references are to the Welfare and Institutions Code.

beginning of the case there were “great gaps in [her] contact and visitation.” It found that “the mother has [not] been able to carry her burden to show that the relationship is one that the child would suffer greatly, suffer great harm if the relationship were terminated.” Accordingly, the juvenile court terminated parental rights.

DISCUSSION

The mother contends the juvenile court erred in failing to find her relationship with D.P. outweighs the benefits of adoption. We find no error.

Adoption is the preferred permanent plan for dependent children who have not reunified with their parents. (§ 366.26, subd. (b)(1).) Thus, the juvenile court will ordinarily terminate parental rights at a permanent plan selection hearing, if it finds by clear and convincing evidence that a child is adoptable. The termination of parental rights to an adoptable child can be avoided, however, if the court finds “a compelling reason for determining that termination would be detrimental to the child” due to at least one of several statutorily-described circumstances. (§ 366.26, subds. (c)(1)(B)(i)-(iv).) The so-called beneficial relationship exception describes circumstances where “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).)

In order to prove that the beneficial relationship exception applies, a parent must overcome the strong statutory presumption in favor of adoption and show that the relationship between her and the child is so beneficial that its severance would render the termination of parental rights detrimental to the child. (*In re Helen W.* (2007) 150 Cal.App.4th 71, 80-81.) “[T]he exception does not permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.)

The juvenile court here correctly balanced the potential benefit of adoption to D.P. against the potential detriment from losing her relationship with the mother. The

child was only 18 months old at the time of the hearing. She had spent most of her young life with her caretakers, who had provided her with a stable, loving family environment and tended to her daily needs. Adoption, whether by the current caretakers or another family, would continue that stability and security for the child. While D.P. apparently enjoyed visiting with her mother, there was no evidence that foregoing that relationship would outweigh the benefit of adoption.

The exceptions to the termination of parental rights come into play only if the parent proves there is a *compelling* reason that termination would be *detrimental* to the child. (§ 366.26, subd. (c)(1)(B)(i).) The juvenile court found no such compelling reason, and its order is supported by substantial evidence in the record. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 53.)

DISPOSITION

The judgment terminating parental rights is affirmed.

SILLS, P. J.

WE CONCUR:

RYLAARSDAM, J.

ARONSON, J.